

II. Rejection Under 35 U.S.C. § 102(b)

The Office has rejected claims 17, 18, 23-30, 32 and 34-36 under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 4,529,586 ("De Marco") for the reasons set forth at pages 2-3 of the outstanding Office Action. Applicants respectfully traverse this rejection.

A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in, and must be arranged as required by, the claim. See M.P.E.P. § 2131.

The presently claimed invention is directed to, *inter alia*, "[a] detergent and conditioning composition comprising, in a cosmetically acceptable medium, a washing base and a conditioning system." See, e.g., claim 17. De Marco, on the other hand, does not disclose a detergent composition or a washing base, but rather, teaches a hair conditioning composition containing an amino functional silicone polymer in aqueous emulsion, a cationic surfactant emulsifier, and a cationic polymer. See, e.g., Abstract and column 1, lines 19-24.

Notably, De Marco is merely directed to "a conditioning composition," and clearly distinguishes his composition from a combination detergent and conditioning composition. For example, De Marco teaches that "shampooing . . . can take place before or after treatment with the conditioner of the present invention." See column 1, lines 48-50. Thus, De Marco teaches that the detergent is separate from the conditioner, not a combination detergent and conditioning composition comprising a washing base and a conditioning system, as in the presently claimed invention.

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Furthermore, regarding the Office's argument that cationic surfactants taught by De Marco read on the claimed washing base, there is no teaching in De Marco that the cationic surfactant emulsifiers of De Marco would function as a washing base. The cationic surfactants are present at relatively low concentrations in the compositions of De Marco, such as from about 0.11% to 0.4%, or 0.1% to 1.5%. See, e.g., column 2, lines 35-43 and column 6, lines 32-34. At these concentrations, De Marco teaches that the cationic surfactants act to emulsify the silicone polymer in aqueous emulsion, reduce static retention, and are believed to prime the hair surface and promote the deposition of the conditioning silicone from the emulsion. See column 2, lines 12-43 and column 6, lines 16-25. Thus, the cationic surfactant emulsifiers are indeed emulsifiers which are part of the conditioning system of De Marco, and there is no teaching in De Marco that they function as a washing base at the disclosed low concentrations.

For the above reasons, each and every limitation of the present claims is not taught or suggested by De Marco. Accordingly, as Applicants' presently claimed invention is not anticipated by this reference, Applicants respectfully request that the rejection be withdrawn.

III. Rejections Under 35 U.S.C. § 103(a)

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. See M.P.E.P. § 2143. Furthermore, there must be a reasonable

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expectation of success in such a modification or combination. *Id.* Finally, the prior art references must teach or suggest all the claimed limitations. *Id.*

A. De Marco Alone

Claims 17-21, 23-30 and 32-36 have been rejected under 35 U.S.C. § 103(a) as unpatentable over De Marco, for the reasons set forth at page 3 of the Office Action. Applicants respectfully traverse this rejection.

For the reasons discussed above, De Marco fails to teach or suggest all the limitations of the presently claimed invention. Moreover, there is no teaching or suggestion in De Marco that would motivate the skilled artisan to modify that reference to include a washing base, nor has the Office pointed to any such motivation, as it must to satisfy its burden. Rather, De Marco's teaching that shampooing can take place before or after treatment with the conditioner of the present invention would lead the skilled artisan away from Applicants' presently claimed composition comprising both a washing base and a conditioning system. Therefore, for at least these reasons, the Office has failed to establish a *prima facie* case of obviousness, and thus the rejection should be withdrawn.

B. De Marco in view of Reich

Claims 17-21 and 23-36 have been rejected under 35 U.S.C. § 103(a) as unpatentable over De Marco in view of WO 94/06403 ("Reich"), for the reasons set forth at page 4 of the Office Action. Applicants respectfully traverse this rejection.

As discussed above, De Marco fails to teach or suggest a detergent and conditioning composition comprising a washing base and conditioning system. The Office has applied Reich in an attempt to cure the deficiencies of De Marco.

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According to the Office, Reich teaches hair-conditioning shampoos containing cationic polymers, anionic surfactants, a hair conditioning amino functional silicone polymer, and a dispersing agent. See Office Action, p. 4. The Office further alleges that the Reich reference discloses the same cationic polymer as in Applicants' claim 31. *Id.*

However, Reich fails to teach Applicants' presently claimed compositions comprising, *inter alia*, a conditioning system comprising a cationic polymer and an amine comprising silicone chosen from polysiloxanes corresponding to formulas (I) and (II). Furthermore, there is no teaching or suggestion in Reich or De Marco that would motivate the skilled artisan to combine these two references in such a manner as to arrive at Applicants' presently claimed detergent and conditioning composition comprising, *inter alia*, a washing base and a conditioning system, wherein the conditioning system comprises at least one cationic polymer and at least one amine comprising silicone chosen from polysiloxanes of formulas (I) and (II). Moreover, the Office has not pointed to any such teaching or motivation, as it must to meet its burden. Accordingly, no *prima facie* case of obviousness has been established over the combination of these references, and the rejection should therefore be withdrawn.

IV. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application, and timely allowance of the pending claims.

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If for any reason the Examiner believes that prosecution of this application may be expedited by a conversation with Applicants' undersigned representative, a telephone call would be greatly appreciated. Applicants' undersigned representative may be reached by telephone at (202) 408-4290.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: February 27, 2002

By:


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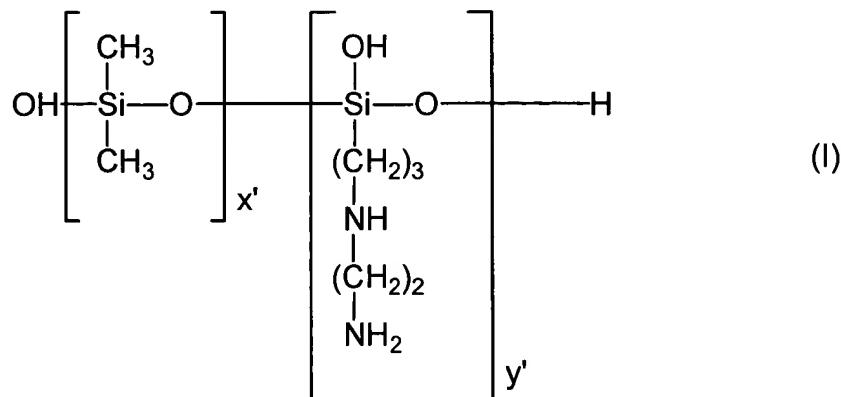
APPENDIX

Version of amended claims with markings to show changes made, pursuant to 37 C.F.R. 1.121(c)(1)(ii).

Claims 17 and 35 were amended, as follows:

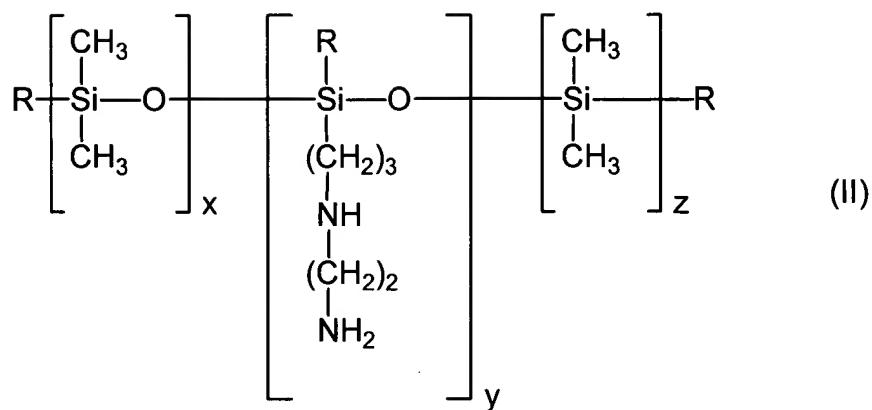
17. (Amended) A detergent and conditioning composition comprising, in a cosmetically acceptable medium, a washing base and a conditioning system, wherein the conditioning system comprises at least one cationic polymer and at least one amine-comprising silicone with a weight-average molecular mass ranging from 11,000 to 25,000, wherein the amine-comprising silicone is chosen from:

(a) polysiloxanes corresponding to the formula (I):



in which x' and y' are integers that depend on the weight-average molecular mass, wherein the molecular mass ranges from 11,000 to 25,000, and [or]

(b) polysiloxanes corresponding to the formula (II):



in which R denotes OH, x, y, and z are integers that depend on the weight-average molecular mass, and wherein the weight-average molecular mass ranges from 11,000 to 25,000.

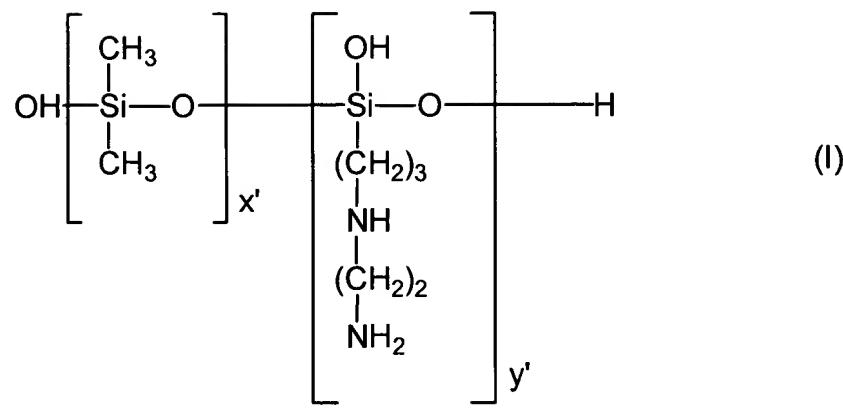
35. (Amended) A process for washing and conditioning keratinous substances comprising:

- wetting the keratinous substances;
- applying to the wetted keratinous substances an effective amount of a composition comprising, in a cosmetically acceptable medium, a washing base and a conditioning system, wherein the conditioning system comprises at least one cationic polymer and at least one amine-comprising silicone with a weight-average molecular mass [of between] ranging from 11,000 [and] to 25,000, wherein the amine-comprising silicone is chosen from:[; and]

(i) polysiloxanes corresponding to the formula (I):

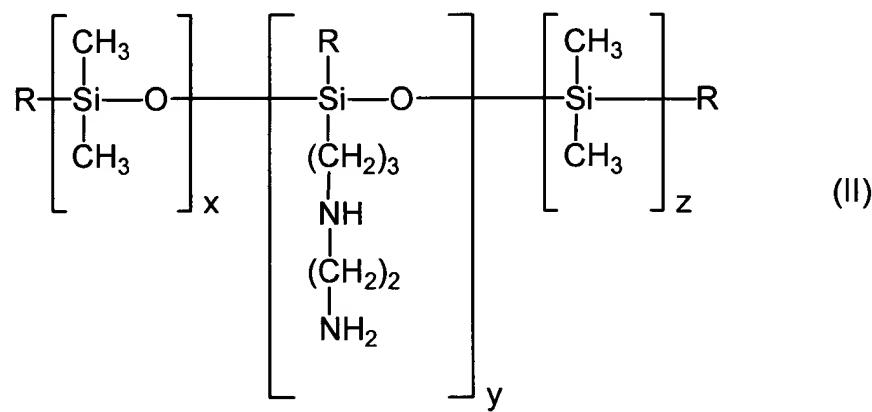
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in which x' and y' are integers that depend on the weight-average molecular mass,
wherein the molecular mass ranges from 11,000 to 25,000, and

(ii) polysiloxanes corresponding to the formula (II):



in which R denotes OH, x, y, and z are integers that depend on the weight-average molecular mass, and wherein the weight-average molecular mass ranges from 11,000 to 25,000; and

c) rinsing the keratinous substances with water.